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 LLC; Reynolds Brothers, Inc.; and Milford
 Investors, LLC*

**UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA**

In re

WESTERN UTAH COPPER COMPANY, a
 Utah corporation,

Debtor.

Case No. 10-51913-gwz

Chapter 11

**OBJECTION OF SECURED CREDITORS
 TO DEBTORS' PROPOSED FORM OF
 ORDER ON EMERGENCY INTERIM DIP
 FINANCING AND MEMORANDUM IN
 SUPPORT**

Pursuant to Local Rule 9021(b), the Secured Creditors,¹ through counsel, object to the Debtors' proposed form of *Order re: Motion for Entry of an Interim Order Authorizing Debtor to Obtain Post-Petition Financing Pursuant to 11 U.S.C. § 11 U.S.C. § 364 and Rule 4001 of the*

¹ The "Secured Creditors" are DDB Utah, LLC; The Raymond W. Schmelzer Marital Trust; Top-Notch Investments, LLC; Rodney Evan Schmelzer; Brent Thomas Bingham; Bridge Loan Capital Fund, LP; Devin Durrant DPI College, LC; Milford Copper Investors II, LLC; Reynolds Brothers, Inc.; and Milford Investors, LLC.

1 *Federal Rules of Bankruptcy Procedure* (the “**Debtors’ Proposed Order**”) for the reasons that it
 2 is not supported by the evidence, contrary to the Court’s rulings, and contradicts the Debtors’
 3 representations made on the record. Pursuant to Local Rule 9021, the Secured Creditors have
 4 lodged a correct, alternate proposed Order (“**Creditors’ Proposed Order**”). The Court should
 5 enter the Creditors’ Proposed Order.

6 **PROCEDURAL BACKGROUND**

7 A. On June 2, 2010, each of the Debtors filed their respective Motion For Order
 8 Shortening Notice Period For Hearing On the Motions (“**Emergency Motion**”) pursuant to which
 9 the Debtors identified four (4) items of alleged emergency concern, namely, utilities, insurance,
 10 security and a premium on a reclamation bond.

11 B. On June 4, 2010, the Court entered its Order denying the Debtors’ Motion for
 12 Order Shortening Notice Period for Hearing on the Motions.

13 C. On June 17, 2010, the Official Committee of Unsecured Creditors (the
 14 “**Committee**”) filed its Motions to Reconsider the Order Denying Motion For Order Shortening
 15 Notice Period For Hearing On Debtors Motion For Entry Of An Order Authorizing Debtor To
 16 Obtain Post-Petition Financing Pursuant To 11 U.S.C. § 364 And Rule 4001 Of The Federal
 17 Rules Of Bankruptcy Procedure (the “**Reconsideration Motion**”), including declarations in
 18 support thereof, in each of the Debtors’ cases.
 19
 20

21 D. On June 17, 2010, the Secured Creditors filed their *Ex-Parte Motion to Shorten*
 22 *Time for Debtor to respond to Discovery Requests Regarding the DIP Financing Motion* [Doc.
 23 No. 89] and on June 17, 2010, the Secured Creditors filed their *Certificate of Service Regarding*
 24 *First Set of Requests for Production of Documents Propounded by the First Priority Secured*
 25 *Creditors to Western Utah Copper Company Regarding the DIP Financing Motion* [Doc. 81].
 26

1 Subsequently, the Secured Creditors also served subpoenas duces tecum upon Altus Metals, LLC
2 (“Altus”) and upon its affiliate, Empire Advisors, LLC (“Empire”). The Court has not yet ruled
3 on this Motion.

4 E. On June 18, 2010, the Secured Creditors filed their *Memorandum in Opposition to*
5 *Motion for Reconsideration of Order Denying Motion for Order Shortening Notice Period for*
6 *Hearing on Debtor's DIP Financing Motion* [Doc. No. 95].

7 F. On June 18, 2010, and without conducting a hearing, the Court entered its Order
8 approving the Reconsideration Motion in the respective cases and scheduled a hearing on the
9 Emergency Motions for June 23, 2010 at 10:30 a.m. in Reno, Nevada

10 G. On June 21, 2010, Nevada Star filed its *NSRC's Objection to Debtor's Motion for*
11 *an Order Authorizing DIP Financing* [Doc. No. 105].

12 H. On June 22, 2010, the Secured Creditors filed their *Memorandum in Opposition to*
13 *Debtor's Emergency DIP Financing Motion* [Doc. No. 32] [Doc. No. 113], as well as their
14 *Motion in Limine to Preclude Introduction of Evidence Irrelevant to Relief Sought in Doc. No. 29*
15 *at the Court's Emergency Hearing on the Debtor's Motion for Authority to Obtain DIP Financing*
16 *Scheduled for June 23, 2010* [Doc. No. 111], *Motion to Strike Hearsay Representations in the*
17 *Declaration of A. John A. Bryan in Support of the Debtor's DIP Financing Motion* [Doc. No. 33]
18 [Doc. No. 110] and *Motion for Court to Take Judicial Notice of the Debtor's Schedules and*
19 *Statement of Financial Affairs at the Emergency Hearing on the Debtor's Motion for Authority to*
20 *Incur Debtor in Possession Financing* [Doc. No. 109]

21 I. On June 22, 2010, the Debtors' filed their *Supplement to Debtor's Motion for*
22 *Entry of an Order Authorizing Debtor to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §*
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1 364 and Rule 4001 of the Federal Rules of Bankruptcy Procedure [Doc. No. 114], which
2 contained a revised interim budget for emergency DIP financing.

3 J. At the hearing on June 23, 2010, the Debtor orally modified its interim funding
4 request and reduced the same to specific items that totaled \$250,000 for a one month period.
5 (“Interim Budget”).
6

7 K. At the hearing on June 23, 2010, neither the Debtors nor Altus offered any
8 evidence to support a finding of good faith under § 364(e) even though the Secured Creditors
9 specifically objected to any such finding. See Memorandum in Opposition to Debtors’
10 Emergency DIP Financing Motion [Docket No. 113] at p.24, citing *In re The Colad Group, Inc.*,
11 327 B.R. 208, 225 (Bankr. W.D.N.Y. 2005). In fact, when counsel for the Secured Creditors
12 attempted to explore the pre-petition relationships between the Debtor, Empire and Altus, the
13 Debtor objected to the inquiry as “irrelevant”.²
14

15 L. At the hearing, the Debtors said they were not asking the court to approve any of
16 the loan documents attached to their DIP Motion, nor were they asking the court to approve
17 waivers or releases in favor of either Altus or Empire.

18 M. At the hearing, the Court specifically granted the Secured Creditors the right to
19 participate with Altus, on a *pari passu* basis, in making the interim funding.³
20

21 N. On June 23, 2010, at 5:20 p.m., the Debtors’ counsel circulated a proposed form of
22 order.

23 ² During his cross-examination, Mr. Bryan acknowledged that Empire was a pre-petition lender to the
24 Debtors. The Statement of Affairs filed by Western Utah Copper Company reveals various pre-petition
25 transfers of equipment, water rights and stock warrants to Empire, some of which were made immediately
26 prior to the Petition Date. See, Statement of Affairs, Western Utah Copper Company, at Question # 10.

³ The Secured Lenders wish to exercise this right and are ready, willing and able to contribute as permitted by the Court.

1 O. On June 24, 2010, at 12:17 p.m. MT, the Secured Creditors and Nevada Star
2 jointly submitted their comments and responses to the original proposed form of order, which
3 contained a revised, clean version of the order, a redline showing changes, the revised interim
4 budget and an explanation of the changes. A copy of that email communication is attached as
5 Exhibit "A".
6

7 P. On June 24, 2010, at 2:30 p.m. MT, the Secured Creditors received comments
8 from Michael Roeschenthaler, on behalf of the Official Committee of Unsecured Creditors (the
9 "Committee") to the Secured Creditors' proposed form of interim order.

10 Q. On June 24, 2010, at 4:53 p.m. MT, the Secured Creditors incorporated the
11 comments of the Committee's counsel and submitted a new revised form of interim financing
12 order. A copy of that email communication is attached as Exhibit "B".
13

14 R. The Secured Creditors received no further communication from the Debtors, from
15 the Committee or from Altus respecting the proposed form of order until Monday, June 28, 2010
16 at 6:50 p.m. MT when the Debtors counsel circulated a new form of order.

17 S. Fifteen minutes later, at 7:05 p.m. MT, the Debtors' counsel circulated another
18 and different proposed form of interim order, which, this time, included both a good faith finding
19 with respect to Altus and a release respecting Altus and Empire.
20

21 T. The Secured Creditors voiced their objection to this new form of proposed order in
22 the communications sent June 28, 2010, at 9:22 p.m. MT A copy of that email communication is
23 attached as Exhibit "C".
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1 U. In response, the Debtors' counsel indicated their intention to lodge their form of
2 order with the court on the morning of Tuesday, June 29, 2010.

3 V. Contrary to this representation, the Debtors' counsel did not lodge any order with
4 the court until Thursday, July 01, 2010, at approximately 11:15 a.m. MT.

5 W. The form of order lodged by the Debtors on July 1, 2010, is materially different
6 than the form of order that the Debtors' counsel circulated on June 28, 2010. Yet, Debtors'
7 counsel did not provide parties with any notice of these material changes at the time they lodged
8 their orders. Attached as Exhibit "D" is a comparison of the two proposed orders that shows
9 these differences.
10

11 X. Notwithstanding the good faith efforts of the Secured Creditors and Nevada Star to
12 arrive at a stipulated form of interim financing order in accordance with Local Rule 9021, the
13 Debtors have elected to lodge their objectionable order.

14 Y. The Creditors Proposed Order has been approved by Nevada Star, but disapproved
15 by the Debtors and the Committee.
16

17 Z. Attached as Exhibit "E" is a comparison of the Debtors' Proposed Order and the
18 Creditors Proposed Order. The insertions and deletions show changes that the Debtors are
19 proposing to the form of order that the Secured Creditors and Nevada Star have approved.
20

21 ARGUMENT

22 1. The Debtors' Proposed Order Eliminates Important Procedural History.

23 The Debtors' Proposed Order strikes Finding "N" of the Creditors Proposed Order. This
24 is a simple, undisputed recital of the Creditors' efforts to obtain discovery in connection with the
25 Debtors' DIP Motion. Not only is this recital true, it is important to illustrate that the Debtors'
26 proceeded with their emergency motion before the Secured Creditors (or any other parties) were

1 able to conduct any discovery regarding the basis for the relief sought or regarding the
2 relationships between the Debtor and its proposed lender. Any order entered by the Court should
3 include this undisputed finding.

4 2. The Secured Creditors Have the Right to Contribute to the Interim Financing; this
5 is not the Debtor's option.

6 In paragraph 1 of the Debtors' Proposed Order, the Debtors have stripped from the
7 Secured Creditors a right specifically granted to them by the Court, namely, the right to
8 contribute, with Altus, up to \$42,000 of the Interim Emergency DIP Funding on a *pari passu*
9 basis. Instead, the Debtors have incorrectly recharacterized the Court's ruling as their "right, but
10 not the obligation," to accept funds from the Secured Creditors. This is not what the Court
11 ordered. The Secured Creditors wish to contribute to the interim financing, as authorized by the
12 Court, and they are ready, willing and able to do so.

13 3. The Debtor's Proposed Order Eliminates the Debtor's Obligation to Allocate the
14 Interim Financing to the Assets Benefitted by Such Financing and Shifts All of the Risk of the
15 Financing to the Secured Creditors.

16 In paragraph 2 of the Debtors' Proposed Order, the Debtors propose to eliminate the
17 following language:

18
19 . . . provided, however, that the amount of the approved interim DIP
20 Financing shall be allocated against the assets of the Debtors in
21 proportion to the amount of the approved interim DIP Financing
22 that is actually expended to protect such assets . . .

23 The Secured Creditors are not the only creditors with liens in this case. As revealed by the
24 Debtors' own schedules, there are other secured creditors, including Empire, which claim security
25 interests in assets, including security interests in various items of equipment. The relative priority
26 of these lenders has not been adjudicated. The purpose of the interim financing is primarily to
protect equipment from possible diminution in value through theft, vandalism, improper

1 maintenance or fire. The Debtors stipulated on the record that during the interim period they
 2 were not conducting any mining or milling operations. Thus, the interim financing is of little or
 3 no value with regard to patented or unpatented mining claims, except to the extent of \$18,000 for
 4 payment of the premium on the reclamation bond. The balance of the interim financing,
 5 therefore, relates to various items of equipment that are being protected and or preserved, with the
 6 amount of the allocation to be determined by the Court at a subsequent hearing. Unless the funds
 7 are so allocated, however, the Court will be unable to determine which secured creditors have
 8 benefitted from the interim financing or the amount of each such creditor's benefit.

9 4. The Grant of a Senior, Super-Priority Administrative Expense Claim to Altus is
 10 Improper.

11 In paragraph 2 of the Debtor's Proposed Order, the Debtors propose to grant Altus "an
 12 allowed administrative expense claim in the Debtors' bankruptcy cases pursuant to § 364(c)(1) of
 13 the Bankruptcy Code *having priority over all administrative expenses of any kind. . . .*" (emphasis
 14 added). This relief was not sought by the Debtors on emergency, interim basis and, therefore, is
 15 beyond the scope of the Debtors' pleadings. Moreover, notice of this additional form of relief
 16 was not provided to parties in interest prior to the hearing. More importantly, a grant of such
 17 relief would deny the Secured Creditors an extremely important right granted to them by Section
 18 507(b) of the Bankruptcy Code. The Court should not permit this language to be included in the
 19 Order.

20 The record is clear that the Secured Creditors objected to the Debtors' request for interim
 21 financing under § 364(d). It is equally clear that the Debtors have offered no adequate protection
 22 to the Secured Creditors for the priming liens that they propose to grant to Altus. In such a
 23 situation, Section 507(b) of the Bankruptcy Code provides some limited protection to an
 24 objecting secured creditor by granting that creditor a superpriority administrative expense claim if
 25 the creditor's interest is inadequately protected. The proposed Order, however, proposes to further
 26

1 subordinate this right to a more senior administrative claim in favor of Altus. The Court cannot
2 and should not permit any such relief.

3 5. The Debtor's Proposed Order does not contain a copy of the Interim Budget and
4 Altus does not have the right to determine the manner in which the Debtor expends the interim
5 financing.

6 In paragraph 1 of the Debtor's Proposed Order, the Debtor proposes to borrow \$250,000
7 "pursuant to a budget *approved by Altus* (the "**Budget**"). . . ." (emphasis added) In recital "U"
8 of this same proposed order, however, the Debtor admits that it orally modified its funding
9 request "and reduced the same to the items and amounts shown on Exhibit "1" which is attached
10 hereto (the "Interim Budget")." Exhibit 1 was not attached to the Debtor's proposed Order.
11 Moreover, it is impossible to determine whether the "budget approved by Altus" is the same as
12 the Debtor's Interim Budget which should have been attached as Exhibit 1.⁴ If the two budgets
13 are different, the Court should only authorize the Debtor to expend funds pursuant to the Interim
14 Budget that was introduced and approved by the Court at the hearing on June 23, 2010. This was
15 the only budget that the Court and parties had an opportunity to review. Altus should not be
16 granted any authority to dictate how the interim financing is expended if, doing so, would be
17 contrary to the interim budget that the Court approved.

18 6. The Debtor's Proposed Waivers and Releases are Improper.

19 In paragraph 5 of the Debtor's Proposed Order, the Debtors grant various "waivers" in
20 favor of *both* Altus and Empire, even though the Debtors specifically represented on the record
21 that they were not seeking nor granting any such releases, notwithstanding the fact that the
22 Debtors were not seeking, on an interim basis, approval of any of the post-petition loan
23 documents, and in spite of the fact that Empire is not even an interim post-petition lender. The
24

25 _____
26 ⁴ The Secured Creditors believe that the Interim Budget is what is shown as Exhibit "1" to their proposed order.

1 waiver proposed by the Debtors is completely gratuitous. Moreover, it was not specifically
2 sought as a form of relief on an emergency basis.

3 Additionally, it is inappropriate for the Court to approve any such waivers (which could
4 be binding on a future Chapter 11 or Chapter 7 trustee) when the Debtors have failed to comply
5 with the requirements of Rule 9019. Whenever a debtor proposes to release or waive any claims
6 in conjunction with some other action that it is authorized to take under the Code, such as
7 obtaining credit, the Court must analyze the transaction under *both*, Rule 9019, and any other
8 applicable provision of the Code. *See e.g., In re Fitzgerald*, 428 B.R. 872 (9th Cir. BAP 2010).⁵
9 In *Fitzgerald*, the Bankruptcy Appellate Panel for the Ninth Circuit considered, sua sponte,
10 whether a sale under the analogous provisions of § 363 was also a compromise under Rule 9019.
11 428 B.R. at 884. It concluded that it was, and that “[t]he bankruptcy court erred when it issued
12 the Sale Order without performing the analysis required by the case law regarding compromises
13 under Rule 9019.” *Id.*⁶ Likewise, here approval of the Debtor’s Proposed Order without
14 conducting an analysis under Rule 9019 would be improper. Absent discovery, it is impossible to
15 determine whether the Debtors have rights and claims against Altus and Empire which are unique
16 to the Debtors (i.e., such as offset rights) and which otherwise might be unavailable to the
17 Committee or other creditors. Paragraph 5 of the Debtors proposed order must be stricken.

18
19
20 ⁵ *See also, In re Mickey Thompson*, 292 B.R. 415, 421 (9th Cir. BAP 2003) (settlement agreement
21 that transferred assets of the estate must be analyzed under Rule 9019 and § 363); *In re Psychosomatic*
22 *System, Inc.*, 367 B.R. 670, 673-74 (Bankr. D. Colo. 2007) (a motion implicating § 363 and Rule 9019
must satisfy the applicable tests under both and [f]ailing either test is a sufficient ground for denying the
Motion.)

23 ⁶ The analysis under Rule 9019 requires a finding that the release or waiver of claims is “fair and
24 equitable.” *Fitzgerald*, 482 B.R. at 884. In turn, “[t]he fair and equitable settlement standard under Rule
25 9019 requires consideration of: (1) probability of success in the litigation; (2) collectability; (3)
26 complexity, expense, inconvenience, and delay attendant to continued litigation; and (4) the interests of
creditors, which are said to be paramount.” *Id.* (citing *In re A&C Props.*, 784 F.2d 1377, 1381 (9th Cir.
1986)). “These four factors are often referred to as the ‘A&C factors.’” *Id.* Like *Fitzgerald*, the Debtor
has failed to allege, let alone show, any facts that would support a finding that the releases proposed in this
case meet the A&C factors.

7. Altus Is Not Entitled to a "Good Faith" Finding.

In Section 6 of their order, the Debtors asks this court to "deem" Altus as a "good faith lender" and who is "entitled to the protections of 11 U.S.C. § 364(e)." The Debtors then go on to ask the Court to order that any "reversal, modification, vacation or stay of the order shall not affect the validity or enforceability of any lien or priority authorized or created" by the order. Such a provision is improper. No evidence whatsoever was introduced at the hearing respecting the good faith of Altus. Thus, there is absolutely no basis upon which the Court can or should make any such finding. In their objection, the Secured Creditors specifically opposed a good faith finding because the Motion was brought on an emergency basis, with little notice, and with no opportunity to conduct discovery. The Debtors and Altus were on notice of this objection. Nevertheless, they elected to forego any presentation of evidence respecting good faith.

As the 9th Circuit BAP noted in *In re M Capital Corporation*, 290 B.R. 743, (9th Cir. BAP 2003), in the context of like language in § 363(m):

Where good faith has been challenged, facts must be established to obtain the safety of [§ 363(m)] offers. Boilerplate good faith findings in orders will not suffice, and courts should avoid the temptation to sign such orders without an evidentiary foundation.
Id. at 752

In *M Capital* the court also held that "... in such proceedings, the proponent of section 363(m) good faith has the burden of proof. This allocation of the burden matters in the present instance because an inference of good faith drawn from a trial court record that is silent on the question would amount to inverting the burden of proof." Id. at 747. Moreover, when counsel for the Secured Creditors attempted, during cross-examination of Mr. Bryan, to investigate the pre-petition relationships between the Debtor, Altus and Empire, the Debtors objected to any such investigation as "irrelevant," and the Court sustained this objection. Accordingly, neither the Debtors nor Altus are entitled to any good faith determination.

1 Finally, even if the Debtors had attempted to put on evidence of good faith, they would
2 not have been able to sustain their burden. Clearly, a finding of good faith is not necessary for the
3 Debtor to obtain post-petition financing. The Secured Lenders offered financing, and are
4 prepared to go forward with financing, without any such determination. Second, the fact that
5 Altus is requiring the Debtor to waive claims *against its affiliate, Empire*, even though Empire is
6 not a post-petition lender and is not providing any consideration to the Debtor, is clear evidence
7 of Altus' bad faith. And, nothing in § 364(e) requires any "finding" or "determination" of good
8 faith. The statute simply provides appeal protection "to an entity that extended such credit in
9 good faith. . . ." The statute does not require or entitle a lender to a finding of good faith from
10 the Court. Last, the Debtor's proposed language is overbroad and contrary to the statute. Section
11 364(e) only discusses reversal or modification on appeal of an authorization to obtain credit. It
12 specifically excepts from this protection an authorization that is stayed pending appeal. The
13 language proposed by the Debtor would grant the protection even if the order were vacated or
14 stayed.

15 8. It is Unclear What Relief the Debtors' are Seeking With Respect to CKMC.

16 The Debtors have lodged two, proposed, identical Interim Orders – one in the CKMC case
17 and the other in the WUCC case. It is unclear what the Debtors intend by doing so. The Secured
18 Creditors only assert liens against the assets of WUCC. The schedules filed by CKMC, show that
19 it has virtually no assets, other than its stock of WUCC, which, based on the schedules filed by
20 WUCC, is worthless. If the Debtors intend to obtain interim financing from Altus secured *only*
21 by the assets of CKMC, then the Secured Creditors have no objection. Obviously, that is not their
22 intent. Submitting identical, duplicate orders in each case, however, is fraught with peril and
23 could only lead to future confusion. Nevertheless, if the Debtors insist on proceeding in this
24 manner, the order that is entered in each case should be expressly limited to the assets of each
25 Debtor.

26

9. Due to the Debtor's Tardiness, the Court Should Not Permit the Debtor to Hold an Expedited or Emergency Hearing on the Proposed Orders and Objections.

Local Rule 9021 does not fix a deadline for a prevailing party to submit a proposed form of order to other parties. It does provide, however, that other parties have three (3) days to indicate their approval or disapproval of any proposed order, and it further provides that "if disapproved, the disapproving party will have until five (5) days from receiving the document to serve and file with the court a detailed statement of objections and an alternative proposal for the document." *See* L.R. 9021(b)(2)(A).

The Debtors initially submitted a proposed interim order on the evening of June 23, 2010. Both the Secured Creditors and Nevada Star promptly responded to that proposal with comments, a revised version and a redline showing their requested changes. The Committee's counsel then promptly responded to the Secured Creditors' proposed form of Order, and requested a few minor modifications, which, within two hours, the Secured Creditors accepted and again circulated another draft of the order. The Debtors, however, did not respond at all until the evening of Monday, June 28, 2010, at which time they submitted their own form of order (the "**Monday Order**"). That same evening, the Secured Creditors and Nevada Star indicated their disapproval of the Monday Order. The Debtors then said that they would lodge the Monday Order with the Court on the following morning. In fact, nothing was filed.

Instead, for inexplicable reasons, the Debtors lodged a new and different form of order on Thursday, July 1, 2010 (the "**Thursday Order**"). Importantly, when they lodged the Thursday Order, the Debtors did not tell parties that it was materially different than the Monday Order, nor did they provide a blackline showing the changes.

This conduct is unfair to other parties and it belies the Debtors' representations about "an emergency" and the need for "emergency funding." The Secured Creditors are not interested in delay, and they have been exceptionally responsive in addressing the form of these orders. Nevertheless, it is unreasonable to expect other parties and the Court to continually accommodate

1 “emergency requests” from the Debtors when, in fact, the Debtors are not acting as if there were a
2 real emergency.

3 The National Fourth of July Holiday is now upon us. Due to pre-existing travel plans,
4 counsel for the Secured Creditors will not be available between 1:00 p.m., Mountain Time on
5 Friday, July 2, 2010 through 9:00 a.m., Mountain Time, on Tuesday, July 6, 2010. From an email
6 auto-reply, the Secured Creditors understand that Ms. Jennifer Smith, local counsel for Altus, also
7 is unavailable until July 6, 2010. To the extent the Court intends to schedule a hearing (whether
8 telephonic or otherwise) to consider these orders and this Objection, counsel requests that the
9 hearing not be conducted until July 6, 2010 at the earliest.

10 CONCLUSION

11 The Debtor’s proposed order is overbroad, inaccurate and inappropriate. It does not
12 reflect the Court’s rulings, the evidence or the Debtors’ express representations. The Court
13 should not enter the Debtor’s Proposed Order and, instead, should enter the Creditors’ Proposed
14 Order.

15 Dated this 1st day of July, 2010.

16 Snell & Wilmer L.L.P.

17
18 /s/ David E. Leta

19 David E. Leta

20 *Attorneys for the Secured Creditors*
21
22
23
24
25
26

Snell & Wilmer
LLP

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CERTIFICATE OF SERVICE

I certify that on the 1st day of July, 2010 a true and correct copy of the foregoing was served via electronic mail upon following:

- J. THOMAS BECKETT ECF@parsonsbehle.com
- BRUCE THOMAS BEESLEY bbeesley@lrlaw.com, rmaples@lrlaw.com; jmouliau@lrlaw.com; mburns@lrlaw.com
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And upon all other parties registered to receive notice through the Court's CM/ECF system.

/s/ David E. Leta

EXHIBIT A

Leta, David

From: Leta, David [dleta@swlaw.com]
Sent: Thursday, June 24, 2010 12:17 PM
To: 'Krikor J. Meshefejian'; Kinas, Rob; Konrad, Mark; Baig, Nishat; rgoodenow@parsonsbehle.com; sbell@parsonsbehle.com; mfreeland@mcguirewoods.com; Roeschenthaler, Michael J.; wprice@mcguirewoods.com; jalter@mcguirewoods.com; Buddy Miller; Jennifer Smith; 'mfreedlander@mcguirewoods.com'; 'Beckett, J. Thomas'
Cc: bbeesley@irlaw.com; Macauley, Laury; Martin J. Brill; David B. Golubchik
Subject: Copper King Mining Corporation/Western Utah Copper Company - DIP Financing Order
Importance: High
Attachments: WUCC - revised interim budget.PDF; WS_BinaryComparison_#11667551v1_SWDMS_ - Interim_DIP_Order_Western.doc-#11667551v2_SWDMS_ - Interim_.DOC; Interim_DIP_Order_Western.doc.DOC

All:

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3. The DIP documents were not approved, and the court was not asked to approve them, even on an interim basis;
4. The Secured Creditors never agreed to subordinate, or modify, their rights under 507(b) in favor of Altus, and the court never addressed this issue;
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Under the local rules, I am trying to make a good faith effort to resolve the form of this order before filing any objections.

Thank you in advance.

6/29/2010

David E. Leta

Snell & Wilmer

L.L.P.

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Salt Lake City, Utah 84101-1547

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 please consider the environment before printing this e-mail

From: Krikor J. Meshefejian [mailto:KJM@lnbrb.com]

Sent: Wednesday, June 23, 2010 5:20 PM

To: Leta, David; Kinas, Rob; Konrad, Mark; Baig, Nishat; rgoodenow@parsonsbehle.com;

sbell@parsonsbehle.com; mfreelander@mcguirewoods.com; Roeschenthaler, Michael J.;

wprice@mcguirewoods.com; jalter@mcguirewoods.com; Buddy Miller; Jennifer Smith

Cc: bbeesley@lrlaw.com; Macauley, Laury; Martin J. Brill; David B. Golubchik

Subject: Copper King Mining Corporation/Western Utah Copper Company - DIP Financing Order

Dear Counsel,

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Krikor John Meshefejian, Esq.

Levene, Neale, Bender, Rankin & Brill L.L.P.

10250 Constellation Boulevard, Suite 1700

Los Angeles, CA 90067

Direct Phone: (310) 229-3380

Main Phone: (310) 229-1234

Facsimile: (310) 229-1244

E-mail: kjm@lnbrb.com

Website: www.lnbrb.com

6/29/2010

EXHIBIT B

Leta, David

From: Leta, David
Sent: Thursday, June 24, 2010 4:53 PM
To: 'Roeschenthaler, Michael J.'; Krikor J. Meshefejian; Kinan, Rob; Konrad, Mark; Baig, Nishat; rgoodenow@parsonsbehle.com; sbell@parsonsbehle.com; mfreelander@mcguirewoods.com; Price, William C.; Alter, Jason P.; Buddy Miller; Jennifer Smith; Freedlander, Mark E.; Beckett, J. Thomas
Cc: bbeesley@lrlaw.com; Macauley, Laury; Martin J. Brill; David B. Golubchik
Subject: RE: Copper King Mining Corporation/Western Utah Copper Company - DIP Financing Order
Attachments: WS_BinaryComparison_#11667551v2_SWDMS_ - Interim_DIP_Order_Western.doc-#11667551v3_SWDMS_ - Interim_DOC; Interim_DIP_Order_Western.doc.DOC

Done. New clean and redline attached.

David E. Leta

Snell & Wilmer

L.L.P.

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From: Roeschenthaler, Michael J. [mailto:MRoeschenthaler@mcguirewoods.com]
Sent: Thursday, June 24, 2010 2:33 PM
To: Leta, David; Krikor J. Meshefejian; Kinan, Rob; Konrad, Mark; Baig, Nishat; rgoodenow@parsonsbehle.com; sbell@parsonsbehle.com; mfreelander@mcguirewoods.com; Price, William C.; Alter, Jason P.; Buddy Miller; Jennifer Smith; Freedlander, Mark E.; Beckett, J. Thomas
Cc: bbeesley@lrlaw.com; Macauley, Laury; Martin J. Brill; David B. Golubchik
Subject: RE: Copper King Mining Corporation/Western Utah Copper Company - DIP Financing Order

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6/29/2010

Thank you,

Mike Roeschenthaler

From: Leta, David [mailto:dleta@swlaw.com]

Sent: Thursday, June 24, 2010 2:17 PM

To: 'Krikor J. Meshefjian'; Kinas, Rob; Konrad, Mark; Baig, Nishat; rgoodenow@parsonsbehle.com; sbell@parsonsbehle.com; mfreelander@mcguirewoods.com; Roeschenthaler, Michael J.; Price, William C.; Alter, Jason P.; Buddy Miller; Jennifer Smith; Freedlander, Mark E.; 'Beckett, J. Thomas'

Cc: bbeesley@lrlaw.com; Macauley, Laury; Martin J. Brill; David B. Golubchik

Subject: Copper King Mining Corporation/Western Utah Copper Company - DIP Financing Order

Importance: High

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David E. Leta

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From: Krikor J. Meshefejian [mailto:KJM@lnbrb.com]

Sent: Wednesday, June 23, 2010 5:20 PM

To: Leta, David; Kinas, Rob; Konrad, Mark; Baig, Nishat; rgoodenow@parsonsbehle.com; sbell@parsonsbehle.com; mfreelander@mcguirewoods.com; Roeschenthaler, Michael J.; wprice@mcguirewoods.com; jalter@mcguirewoods.com; Buddy Miller; Jennifer Smith

Cc: bbeesley@lrlaw.com; Macauley, Laury; Martin J. Brill; David B. Golubchik

Subject: Copper King Mining Corporation/Western Utah Copper Company - DIP Financing Order

Dear Counsel,

Pursuant to Local Rule 9021, attached please find the proposed DIP Financing Orders in connection with today's ruling upon the above-referenced Debtors' interim financing request. Please provide us with your approval and/or comments as soon as possible, as we would like to lodge the orders by no later than close of business tomorrow. Thank you.

Krikor John Meshefejian, Esq.
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Direct Phone: (310) 229-3380
Main Phone: (310) 229-1234
Facsimile: (310) 229-1244
E-mail: kjm@lnbrb.com
Website: www.lnbrb.com

6/29/2010

EXHIBIT C

Leta, David

From: Leta, David
Sent: Monday, June 28, 2010 9:22 PM
To: 'David B. Golubchik'; Roeschenthaler, Michael J.; Krikor J. Meshefejian; Kinas, Rob; Konrad, Mark; Baig, Nishat; rgoodenow@parsonsbehle.com; sbell@parsonsbehle.com; mfreelander@mcguirewoods.com; Price, William C.; Alter, Jason P.; Buddy Miller; Jennifer Smith; Freedlander, Mark E.; Beckett, J. Thomas
Cc: bbeesley@lrlaw.com; Macauley, Laury; Martin J. Brill
Subject: RE: Copper King Mining Corporation/Western Utah Copper Company - DIP Financing Order

I will take a look at this order in the morning, but, as I indicated last Thursday when I gave you my comments to the initial proposed order, no evidence of good faith was introduced at the hearing, no motion for a finding of the same was made at the hearing, and, when I attempted to explore the relationship between the Debtor and Altus, the Debtor objected. Moreover, the Debtor expressly stated on the record that there were no waivers being sought or given in connection with this interim funding. Finally, Tom and I provided prompt comments and proposed revisions to the Order within less than 24 hours from when the initial draft was submitted, and we also incorporated the committee's comments immediately upon receipt of the same. All of this was completed by mid-day last Thursday. The Debtor has done nothing to move this process forward since receiving those comments until now -- over 4 days later -- and it is unreasonable to expect opposing parties to jump through hoops when the Debtor is unwilling or unable to do likewise.

David E. Leta

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 Salt Lake City, Utah 84101-1547

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From: David B. Golubchik [mailto:DBG@lnbrb.com]

Sent: Monday, June 28, 2010 7:05 PM

To: Roeschenthaler, Michael J.; Leta, David; Krikor J. Meshefejian; Kinas, Rob; Konrad, Mark; Baig, Nishat; rgoodenow@parsonsbehle.com; sbell@parsonsbehle.com; mfreelander@mcguirewoods.com; Price, William C.; Alter, Jason P.; Buddy Miller; Jennifer Smith; Freedlander, Mark E.; Beckett, J. Thomas

Cc: bbeesley@lrlaw.com; Macauley, Laury; Martin J. Brill

Subject: RE: Copper King Mining Corporation/Western Utah Copper Company - DIP Financing Order

Apologies to all. I did not notice that Debtor's waivers and good faith finding was deleted by someone. This is a critical component of the financing, was included in the moving papers and lender stated that it will fund without

6/29/2010

these provisions. Attached are the corrected versions with these provisions inserted, which will be filed tomorrow.

Thanks

David B. Golubchik, Esq.
Levene, Neale, Bender, Rankin & Brill L.L.P.
10250 Constellation Blvd., Suite 1700
Los Angeles, California 90067
Telephone: (310) 229-1234
Facsimile: (310) 229-1244
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Email: dbg@lnbrb.com
Website: www.lnbrb.com

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From: David B. Golubchik
Sent: Monday, June 28, 2010 5:50 PM
To: 'Roeschenthaler, Michael J.'; Leta, David; Krikor J. Meshefejian; Kinas, Rob; Konrad, Mark; Baig, Nishat; rgoodenow@parsonsbehle.com; sbell@parsonsbehle.com; mfreelander@mcguirewoods.com; Price, William C.; Alter, Jason P.; Buddy Miller; Jennifer Smith; Freedlander, Mark E.; Beckett, J. Thomas
Cc: bbeesley@lrlaw.com; Macauley, Laury; Martin J. Brill
Subject: RE: Copper King Mining Corporation/Western Utah Copper Company - DIP Financing Order

Attached hereto please find a clean and redline version of the order which follows the version sent by Michael Roeschenthaler. We intend to lodge this version first thing in the morning.

Thank you

David B. Golubchik, Esq.
Levene, Neale, Bender, Rankin & Brill L.L.P.
10250 Constellation Blvd., Suite 1700
Los Angeles, California 90067
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From: Roeschenthaler, Michael J. [<mailto:MRoeschenthaler@mcguirewoods.com>]
Sent: Thursday, June 24, 2010 1:33 PM
To: Leta, David; Krikor J. Meshefejian; Kinas, Rob; Konrad, Mark; Baig, Nishat; rgoodenow@parsonsbehle.com; sbell@parsonsbehle.com; mfreelander@mcguirewoods.com; Price, William C.; Alter, Jason P.; Buddy Miller; Jennifer Smith; Freedlander, Mark E.; Beckett, J. Thomas
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Cc: bbeesley@lrlaw.com; Macauley, Laury; Martin J. Brill; David B. Golubchik
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6/29/2010

EXHIBIT D

1 the \$250,000 advance from the Secured Creditors. Such advances shall be governed by the terms
2 of this Order.

3 2. Priming Lien and Superpriority Treatment for Advances. All of the obligations of
4 the Debtors under the Approved Interim DIP Financing shall constitute an allowed administrative
5 expense claim in the Debtors' bankruptcy cases pursuant to Section 364(c)(1) of the Bankruptcy
6 Code having priority over all administrative expenses of any kind; and shall be secured by an
7 enforceable first priority priming lien pursuant to Section 364(c)(2) and (d)(1) of the Bankruptcy
8 Code on all of the existing and after-acquired assets of the Debtors of any kind or nature, except
9 claims and avoidance actions under Chapter 5 of the Bankruptcy Code, and provided such
10 priming liens shall not attached to any property that is not property of the Debtors.

11
12 3. Interest Rate. Interest on funds advanced under the Approved Interim DIP
13 Financing shall accrue interest at 12.99% per annum, compounded monthly, subject to an increase
14 of 5% from and after any Event of Default, as that term is defined in the DIP Loan Documents.

15
16 4. Term. The Approved Interim DIP Financing shall be due and payable in full on
17 the earlier of (a) June 28, 2011; (b) dismissal or conversion of either of the Cases; (c)
18 confirmation of a plan of reorganization in either of the Cases; or (d) appointment of a trustee in
19 either of the Cases.

20
21 5. Debtors' Waivers. Debtors acknowledge the validity and enforceability of pre-
22 petition financing documents of Empire Advisors, LLC and Altus (collectively, the "Altus
23 Parties"), as well as the validity of any related liens and security interests as to the Debtors' assets
24 described therein. Debtors further waive and release any defenses, claims, objections, or
25 counterclaims with respect to the claims, liens or security interests of the Altus Parties, including
26 under the Altus Parties' pre-petition financing documents, and Debtors' acknowledge the
27
28

EXHIBIT E

MARTIN J. BRILL (Calif. Bar No. 53220) mjb@lnbrb.com
DAVID B. GOLUBCHIK (Calif. Bar No. 185520) dbg@lnbrb.com
KRIKOR J. MESHEFEJIAN (Calif. Bar No. 255030) kjm@lnbrb.com
LEVENE, NEALE, BENDER, RANKIN & BRILL L.L.P.
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Facsimile: (310) 229-1244

Proposed Reorganization Counsel for Chapter 11 Debtor and Debtor-in-Possession

Bruce T. Beesley (NV Bar No. 1164) bbeesley@lrlaw.com
LEWIS AND ROCA LLP
Bank of America Plaza
50 West Liberty Street, Suite 410
Reno, Nevada 89501
Telephone: (775) 823-2900

Proposed Co-Counsel for Chapter 11 Debtor and Debtor-in-Possession

Robert R. Kinas (Nevada Bar No. 6019)
Mark E. Konrad (Nevada Bar No. 4462)
Nishat Baig (Nevada Bar No. 11047)
SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
Telephone: (702) 784-5200
Facsimile: (702) 784-5252
Email: rkinas@swlaw.com
mkonrad@swlaw.com
nbaig@swlaw.com

David E. Leta (UT Bar No. 1937)
Admitted Pro Hac
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*Attorneys for DDB Utah, LLC; The
Raymond W. Schmelzer Marital Trust; Top-
Notch Investments, LLC; Rodney Evan
Schmelzer; Brent Thomas Bingham; Bridge
Loan Capital Fund, LP; Devin Durrant DPI
College, LC; Milford Copper Investors II,*

1 ~~LLC; Reynolds Brothers, Inc.; and Milford~~
2 ~~Investors, LLC~~

3 **UNITED STATES BANKRUPTCY COURT**
4 **DISTRICT OF NEVADA**

5 In re:

6 WESTERN UTAH COPPER COMPANY,

7 Debtor and Debtor-in-Possession.

Case No. 10-51913-GWZ
Chapter 11

8 **ORDER RE: MOTION FOR ENTRY**
9 **OF AN INTERIM ORDER**
10 **AUTHORIZING DEBTOR TO**
11 **OBTAIN POST-PETITION**
12 **FINANCING PURSUANT TO 11**
13 **U.S.C. § 364 AND RULE 4001 OF THE**
14 **FEDERAL RULES OF BANKRUPTCY**
15 **PROCEDURE**

16 Hearing:
17 Date: June 23, 2010
18 Time: 10:30 a.m.

19
20
21
22 **THIS MATTER** having come before the Court, on shortened time, on the request
23 for approval of an immediate interim advance with respect to the Motions, filed by Copper King
24 Mining Corporation ("CKMC") and Western Utah Copper Company ("WUCC" and collectively
25 with CKMC, the "Debtors"), For Entry Of An Order Authorizing Debtor To Obtain Post-Petition
26 Financing Pursuant To 11 U.S.C. § 364 and Rule 4001 Of The Federal Rules Of Bankruptcy
27
28

1 Procedure (the "DIP Motions"); and the Court having considered the DIP Motions and related
2 pleadings, oppositions, motion in limine, and the argument of counsel, and for good cause
3 appearing, the Court enters the following FINDINGS:

4 A. On May 18, 2010 (the "Petition Date"), the Debtors each filed a voluntary petition
5 for relief with this Court under Chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases").
6 The Debtors are continuing in possession of their property, and operating and managing their
7 businesses, as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

8 B. On June 4, 2010, the Official Committee of Unsecured Creditors (the
9 "Committee") was appointed in ~~these~~ the Debtors' cases.

10 C. CPRK, a Nevada corporation, is a public company traded on the "Pink Sheets"
11 under the symbol of CPRK.

12 D. WUCC, a Utah corporation, is a wholly-owned subsidiary of CPRK and engaged
13 in owning, exploring and excavation mining and mineral rights in the state of Utah.

14 E. The Debtors' real property and personal property assets are encumbered by liens
15 and security interests in favor of third parties.

16 F. Other than avoidance actions under Chapter 5 ~~causes of action of the~~
17 Bankruptcy Code and the proceeds therefrom, the Debtors do not own substantial and valuable
18 assets which are not otherwise encumbered by liens and security interests.

19 G. The Debtors' operations are at a standstill and the Debtors currently are not either
20 operating their facilities or engaged in any mining operations.

21 H. On June 2, 2010, each of the Debtors filed their respective DIP Motions with
22 supporting declarations of A. John A. Bryan, Jr., Marcus Southworth, O. Jay Gaten, David
23 Hartshorn, and Michael G. Nelson, Ph.D., requesting approval of a post petition Debtor in
24 Possession Financing in an amount not to exceed \$15,000,000 (the proposed "DIP Facility"),
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1 \$1,100,000 of which to be provided on an interim basis ("Interim DIP Financing") pursuant to
2 that certain Debtor-In-Possession Financing And Security Agreement ("DIP Loan Documents").

3 I. On June 2, 2010, each of the Debtors filed their respective Motion For Order
4 Shortening Notice Period For Hearing On the Motions ("Emergency Motion") pursuant to which
5 the Debtors identified four (4) items of alleged emergency concern, namely, utilities, insurance,
6 security and a premium on a reclamation bond.

7
8 J. On June 4, 2010, the alleged first priority secured creditors ("Secured
9 Creditors")¹ filed their *First Priority Secured Lenders' Opposition to Motion for Order*
10 *Shortening Notice Period for Hearing on Debtor's Motion for Entry of an Order Authorizing*
11 *Debtor to Obtain Post-Petition Financing Pursuant to 11 U.S.C. § 364 and Rule 4001 of the*
12 *Federal Rules of Bankruptcy Procedure* [Doc. No. 41].

13
14 K. On June 4, 2010, Nevada Star Resource Corporation ("Nevada Star") filed its
15 *Objection to Debtor's Motion for Hearing on Postpetition Financing on Shortened Notice* [Doc.
16 No. 42].

17 L. On June 4, 2010, and without conducting a hearing, the Court entered each of
18 the cases its Order denying the Debtors' Motion for Order Shortening Notice Period for Hearing
19 on the Motions.

20
21 M. On June 17, 2010, the Committee filed its Motions to Reconsider the Order
22 Denying Motion For Order Shortening Notice Period For Hearing On Debtors Motion For Entry

23
24 ¹ DDB Utah, LLC; The Raymond W. Schmelzer Marital Trust; TopNotch
25 Investments, LLC; Rodney Evan Schmelzer; Brent Thomas Bingham;
26 Bridge Loan Capital Fund, LP; Devin Durrant DPI
27 College, LC; Milford Copper Investors II, LLC; Reynolds Brothers,
28 Inc.; and Milford Investors, LLC

1 Of An Order Authorizing Debtor To Obtain Post-Petition Financing Pursuant To 11 U.S.C. § 364
 2 And Rule 4001 Of The Federal Rules Of Bankruptcy Procedure (the "Reconsideration Motion"),
 3 including declarations in support thereof, in each of the Debtors' cases.
 4

5 ~~N. On June 17, 2010, the Secured Creditors filed their *Ex Parte Motion to Shorten*~~
 6 ~~*Time for Debtor to respond to Discovery Requests Regarding the DIP Financing Motion* [Doc.~~
 7 ~~*No. 89]* and on June 17, 2010, the Secured Creditors filed their *Certificate of Service Regarding*~~
 8 ~~*First Set of Requests for Production of Documents Propounded by the First Priority Secured*~~
 9 ~~*Creditors to Western Utah Copper Company Regarding the DIP Financing Motion* [Doc. 81].~~
 10 Subsequently, the Secured Creditors also served subpoenas duces tecum upon Altus Metals, LLC
 11 ("Altun") and upon its affiliate, Empire Advisors, LLC ("Empire").

12 N. ~~On June 18, 2010, the Secured Creditors filed their *Memorandum in Opposition*~~
 13 ~~*to Motion for Reconsideration of Order Denying Motion for Order Shortening Notice Period for*~~
 14 ~~*Hearing on Debtor's DIP Financing Motion* [Doc. No. 95].~~

15 O. ~~P.~~ On June 18, 2010, and without conducting a hearing, the Court entered its Order
 16 approving the Reconsideration Motion in the respective cases and scheduled a hearing on the
 17 Emergency Motions for June 23, 2010 at 10:30 a.m. in Reno, Nevada

18 P. ~~Q.~~ On June 21, 2010, Nevada Star filed its *NSRC's Objection to Debtor's Motion*
 19 ~~*for an Order Authorizing DIP Financing* [Doc. No. 105].~~

20 Q. ~~R.~~ On June 22, 2010, the Secured Creditors filed their *Memorandum in Opposition*
 21 ~~*to Debtor's Emergency DIP Financing Motion* [Doc. No. 32] [Doc. No. 113], as well as their~~
 22 ~~*Motion in Limine to Preclude Introduction of Evidence Irrelevant to Relief Sought in Doc. No. 29*~~
 23 ~~*at the Court's Emergency Hearing on the Debtor's Motion for Authority to Obtain DIP Financing*~~
 24 ~~*Scheduled for June 23, 2010* [Doc. No. 111], *Motion to Strike Hearsay Representations in the*~~
 25 ~~*Declaration of A. John A. Bryan in Support of the Debtor's DIP Financing Motion* [Doc. No. 33]~~
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[Doc. No. 110] and *Motion for Court to Take Judicial Notice of the Debtor's Schedules and Statement of Financial Affairs at the Emergency Hearing on the Debtor's Motion for Authority to Incur Debtor in Possession Financing* [Doc. No. 109]

R. ~~S.~~—On June 22, 2010, the Debtors' filed their *Supplement to Debtor's Motion for Entry of an Order Authorizing Debtor to Obtain Post-Petition Financing Pursuant to 11 U.S.C. § 364 and Rule 4001 of the Federal Rules of Bankruptcy Procedure* [Doc. No. 114], which contained a revised interim budget for emergency DIP financing (the "Proposed Interim DIP Budget").

S. ~~T.~~—Also on June 22, 2010, the Committee filed its *Limited Objection to Motion for Entry of an Order Authorizing Debtor to Obtain Post-Petition Financing Pursuant to 11 U.S.C. § 364 and Rule 4001 of the Federal Rules of Bankruptcy Procedure and Reservation of Rights* [Doc. No. 112]

T. ~~U.~~—On June 23, 2010, the Debtors' filed the *Declaration of Edwin Reese Davis, Jr. in Support of Debtors Motion for Entry of an Order Authorizing Debtor to Obtain Post-Petition Financing Pursuant to 11 U.S.C. § 364 and Rule 4001 of the Federal Rules of Bankruptcy Procedure* [Doc. No. 115]

U. ~~V.~~—At the hearing on June 23, 2010, the Debtor orally modified the Proposed Interim DIP Budget and reduced the same to the items and amounts shown on Exhibit "1" which is attached hereto ("Interim Budget").

V. ~~W.~~—As set forth in the Declarations of A. John A. Bryan, Jr. and Marcus Southworth, as well as testimony presented by A. John A. Bryan, Jr. in Court, the Debtors lack funds in order to maintain and preserve the ~~equipment~~assets of their respective estates and, further, that the Debtors are unable to obtain unsecured credit for the Interim DIP Financing allowable under Bankruptcy Code 503(b)(1) as an administrative expense, and that such financing

on a post-petition basis is not otherwise available without securing such indebtedness and obligations with the security interest in and the liens upon the property described below pursuant to Section 364(d) of the Bankruptcy Code.

W. ~~X.~~—The Debtors' need for the Interim DIP Financing pursuant to the Interim Budget is immediate.

X. ~~Y.~~—In connection with the Emergency Motion, and in consideration for the Interim DIP Loan, the Debtors have not offered, and do not have the ability to provide, the Secured Creditors with either (a) a replacement lien on any other property, (b) interim payments, (c) third party guaranties or any other adequate protection, other than the proposed expectation that the expenditures under the Interim Budget will avoid a diminution in the value of the equipment assets that exceeds the amount of the proposed expenditures.

Y. ~~Z.~~—The Secured Creditors and Nevada Star opposed the Emergency Motion and did not consent to the Interim Budget.

Based upon the foregoing findings and conclusions, and upon the record made before this Court, and good cause appearing:

IT IS HEREBY ORDERED as follows:

1. Authorization for Borrowing. Debtors are authorized to borrow from Altus Metals, LLC ("Altus") and from Secured Creditors, as provided below, an amount not to exceed the principal amount of \$300,000 (the "Approved Interim DIP Financing"), consisting of \$250,000 to the Debtors ~~for the specific items identified in the Interim Budget, pursuant to a budget approved by Altus (the "Budget")~~ and reimbursement of Altus' costs and expenses in the amount of \$50,000. ~~To the extent offered by the Secured Creditors, the Debtors shall~~ The Debtors have the right, but not the obligation, to accept, on a *pari passu* basis ~~with Altus, up~~

1 to, \$42,000 in funding, to be included in the \$250,000 advance from the first priority
 2 ~~lienholders~~ Secured Creditors. Such advances shall be governed by the terms of this Order.

3 2. Priming Lien and Superpriority Treatment for Advances. All of the obligations
 4 of the Debtors under the Approved Interim DIP Financing shall constitute an allowed
 5 administrative expense claim in the Debtors' bankruptcy cases pursuant to Section 364(c)(1)
 6 of the Bankruptcy Code having priority over all administrative expenses of any kind; and
 7 shall be secured by an enforceable first priority priming lien pursuant to Section 364(c)(2) and
 8 (d)(1) of the Bankruptcy Code on all of the existing and after-acquired assets of the Debtors of
 9 any kind or nature, except claims and avoidance actions under Chapter 5 of the Bankruptcy Code;
 10 provided, however, that the amount of the Approved Interim DIP Financing shall be allocated
 11 against the assets of the Debtors in proportion to the amount of the Approved Interim DIP
 12 Financing that is actually expended to protect such assets, and provided, further, such priming
 13 liens shall not attached to any property that is not property of the Debtors.

16 3. Interest Rate. Interest on funds advanced under the Approved Interim DIP
 17 Financing shall accrue interest at 12.99% per annum, compounded monthly, subject to an increase
 18 of 5% from and after any Event of Default, as that term is defined in the DIP Loan Documents.

19 4. Term. The Approved Interim DIP Financing shall be due and payable in full on
 20 the earlier of (a) June 28, 2011; (b) dismissal or conversion of either of the Cases; (c)
 21 confirmation of a plan of reorganization in either of the Cases; or (d) appointment of a trustee in
 22 either of the Cases.

24 5. Debtors' Waivers. Debtors acknowledge the validity and enforceability of
 25 pre-petition financing documents of Empire Advisors, LLC and Altus (collectively, the
 26 "Altus Parties"), as well as the validity of any related liens and security interests as to the
 27 Debtors' assets described therein. Debtors further waive and release any defenses, claims,
 28

objections, or counterclaims with respect to the claims, liens or security interests of the Altus Parties, including under the Altus Parties' pre-petition financing documents, and Debtors' acknowledge the enforceability by the Altus Parties of all pre-petition contracts relating to the Altus Parties' transactions. The acknowledgments, waivers and releases provided by this paragraph are immediately effective as to the Debtors, but are not binding upon other parties in interest, including the Official Committee of Unsecured Creditors, absent further order of the Court.

6. No Modification or Stay of this Order. Altus is deemed a good faith lender and entitled to the protections of 11 U.S.C. § 364(e). If any or all of the provisions of this Order are hereafter reversed, modified, vacated, or stayed, such act shall not affect the validity and enforceability of any lien or priority authorized or created hereby.

7. 5. Final Hearing. A final hearing has not been scheduled by the Court pending transfer of venue of the Cases to Utah and the currently scheduled July 23, 2010 hearing is hereby taken off calendar.

8. 6. Controlling Effect of Order. To the extent any provisions in this Order conflict with any provisions of DIP Motions or the Emergency Motion, the provisions of this Order shall control.

9. Nothing in this Order shall constitute an adjudication on the merits of the DIP Motions in connection with any final hearing thereon.

10. 7. Reservation of Rights. ~~Nothing in this Order shall (a) constitute an adjudication on the merits of the DIP Motions in connection with any final hearing thereon, or (b)~~ Nothing in the Order shall bar or otherwise estop the Committee or any other creditor from challenging the propriety, extent and/or validity of any claim or lien held and/or asserted in the Debtors' bankruptcy cases.

1 11. ~~8.~~ Order Effective. This Order shall be effective as of the date of signature by the
2 Court.

3 **IT IS SO ORDERED.**
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In accordance with LR 9021, the undersigned certifies as follows:

~~_____ The court has waived the requirement of approval under LR 9021.~~

~~_____ I have delivered a copy of this proposed order to all attorneys and unrepresented parties who appeared at the hearing regarding this matter and/or who filed a written objection and each has:~~

~~_____ approved the form of this order;~~

~~_____ waived the right to review the order; and/or~~

~~_____ failed to file and serve papers in accordance with LR 9021(c).~~

X ~~_____ I have delivered a copy of this proposed order to all attorneys and unrepresented parties who appeared at the hearing regarding this matter and/or who filed a written objection and all have either approved the form of this order, waived the right to review the order, failed to file and serve papers in accordance with LR 9021(c) and the following have approved or disapproved the form of this order.~~

Approved/Disapproved

PARSONS, BEHLE & LATIMER

By /s/ J. Thomas Beckett

J. Thomas Beckett

Representing Nevada Star Resource Corp.

MCGUIREWOODS, LLP

By _____

Michael J. Roeschenthaler

*Representing The Official Committee of
Unsecured Creditors*

Approved/Disapproved

LEVENE, NEALE, BENDER, RANKIN &
BRILL

By _____

David B. Golubchik

Martin J. Brill

Representing Debtor

LIONEL SAWYER & COLLINS

By _____

Jennifer A. Smith

Representing Empire Advisors, LLC

~~_____ No opposition was filed to the motion and no other party or counsel appeared at the hearing.~~

Respectfully submitted,

SNELL & WILMER

/s/ David E. Leta

David E. Leta (UT Bar No. 1937) (*admitted pro hac vice*)

15 West South Temple, Suite 1200

Salt Lake City, UT 84101-1004

Representing Secured Creditors

CERTIFICATE OF SERVICE

I certify that on the 30th day of June, 2010 a true and correct copy of the foregoing was served via electronic mail upon following:

- J. THOMAS BECKETT — ECF@parsonsbehle.com
- BRUCE THOMAS BEESLEY — bbeesley@lrlaw.com, rmaples@lrlaw.com; jmoulia@lrlaw.com; mburns@lrlaw.com
- SCOTT S. BELL — ecf@parsonsbehle.com
- DAVID B GOLUBCHIK — dbg@lnbrb.com, angela@lnbrb.com
- REW R. GOODENOW — ecf@parsonsbehle.com
- ROBERT R. KINAS, rkinas@swlaw.com, jmath@swlaw.com, mfull@swlaw.com, edossier@swlaw.com, lvdocket@mindspring.com, veampbell@swlaw.com
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- JENNIFER A. SMITH — bklser@lionelsawyer.com, cobrien@lionelsawyer.com
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- DAVID B. GOLUBCHIK, db@lnbrb.com
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- JASON P. ALTER, jalter@meguirewoods.com

/s/ David E. Leta

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Moved to	
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Format change	
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Moved cell	
Split/Merged cell	
Padding cell	

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